



State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY

DIVISION OF LAW

TRANSPORTATION—HIGHWAYS SECTION

1035 PARKWAY AVENUE

P.O. BOX 101

TRENTON 08625

TELEPHONE 609-292-5957

JOHN J. DEGNAN
ATTORNEY GENERAL

STEPHEN SKILLMAN
ASSISTANT ATTORNEY GENERAL
DIRECTOR

RICHARD L. RUDIN
DEPUTY ATTORNEY GENERAL
SECTION CHIEF

January 21, 1980

Mr. Michael V. Polito
U.S. Environmental Protection Agency
Region II, Emergency Response and
Inspection Branch
Raritan GSA Depost Building 209
Woodbridge Avenue
Edison, New Jersey 08817

Re: Interstate Route 280, Kearny, New Jersey

Dear Mr. Polito:

In our telephone conversation of January 17, 1980, you requested to be advised concerning the efforts by the State of New Jersey, Department of Transportation (DOT), to deal with the presence of an oil sheen in the drainage ditches now under construction as part of the I-280 Project, Sections 8A and 8D, in Kearny, New Jersey.

When the presence of an oil sheen on the ditch adjacent to Ramp M was first reported to this office by yourself and DOT Resident Engineer, Ulrich H. Steinberg in November, 1979, I instructed Mr. Steinberg that none of the drainage ditches be opened into storm sewers or navigable waters until the presence of oil was eliminated. In subsequent weeks, DOT and its contractor undertook various measures in an effort to alleviate the problem, including stabilizing slopes and providing additional topsoil and cover material. Representatives of the Hackensack Meadowlands Development Commission (HMDC) and the Department of Environmental Protection (DEP) of the State of New Jersey were also consulted, and various proposals, including a liner for the ditches, were studied.

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On November 14th and 21st, I personally met with representatives of DEP to outline the problem and plan actions to address it. As a result of these meetings, it was agreed that DEP would inspect the ditches and advise the DOT as to measures necessary to deal with the contamination. On December 7, 1979, I accompanied Gary Allen and Greg Reuter of DEP on a field inspection, and as a result of their observations and advice, I instructed Resident Engineer Steinberg on December 14, 1979, that the ditches could not be opened to Frank's Creek until a treatment system had been approved by DEP and installed.

On January 3, 1980, a meeting was held at which representatives of DOT, DEP and the Federal Highway Administration were present. Various treatment systems designs, including an inverted siphon were discussed. DEP advised that sampling of the liquid in the ditches would be needed before DEP could approve a design for a treatment system. This sampling was performed by DEP on January 9, 1980, and DOT is currently preparing a design for a treatment system and pursuing a permit application with DEP.

Until all necessary permits, including NPDES, have been issued by DEP, no discharge will be made from the I-280 drainage ditches. I have personally inspected the ditches with Mr. Steinberg as recently as January 10, 1979, and there is no imminent danger of their contents overflowing or otherwise escaping into navigable waters.

On behalf of DOT, I would like to point out that at least part, if not all, of the oil finding its way into the drainage ditches originates from the oil-contaminated groundwater beneath the Diamond Head Oil Refining facility on 1401 Harrison Avenue. During DEP's inspection of December 7, 1979, Gary Allen and myself observed a trail of oil-stained ground leading from the southeast side of the facility into the ditch adjacent to Ramp M through a cut in the slope. A particularly heavy concentration of oil was observed in this area of the ditch contiguous to this outlet. Moreover, Mr. Allen observed signs of free spillage and overflowing tanks in the Diamond Head facility. Such spillage finds its way into DOT's ditches through the groundwater and surface runoff.

Moreover, DOT has convincing evidence, including past inspections by EPA, which clearly indicates that the historical source of oil in the entire area of the I-280 Project was the Diamond Head facility. Therefore, under section 311 of the FWPCA,

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33 U.S.C.A. §1321, the legal responsibility for any escape of oil from the area is on the owners and operators of the Diamond Head facility.

Nonetheless, DOT recognizes its public duty to insure that pollutants will not escape from its property into waters of the United States, and will pursue its legal rights against the pollution source — the corporate owners of the Diamond Head facility — to recover the costs incurred in eliminating the oil contamination.

Having endeavored through this letter to bring EPA up to date of the State's plans, I will keep you advised of our continued efforts as they develop.

With thanks for your cooperation.

Very truly yours,

JOHN J. DEGNAN
Attorney General of New Jersey

Thomas J. Germin

By: Thomas J. Germin
Deputy Attorney General

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